

State Of California
California Occupational Safety and Health Appeals Board
Minutes of the Public Meeting & Closed Session
Held on May 5, 2022
Sacramento, California
West Covina, California
Zoom Platform

Present:

Ed Lowry, Chair, Public Member
Judith Freyman, Management Member
Marvin Kropke, Labor Member
Patricia Hapgood, Acting Executive Officer
Jeff Mojcher, Chief Counsel
Kevin Reedy, Supervising Judge
Sam Lucas, Supervising Judge
Elizabeth Clarke, Attorney
Vincent Mersich, Industrial Relations Counsel
Meghan Zapata, Staff Services Manager
Janis Jonas, Executive Secretary
Kerry Lewis, Administrative Law Judge
Christopher Jessup, Administrative Law Judge

Minutes of April 21, 2022 Meeting:

(Approve or amend minutes of previous board meeting.)

Action: The Board approved the minutes of the April 7, 2022 Board meeting.
Moved: Marvin Kropke
Seconded: Judith Freyman
The vote was 3-0

New Business:

(The appeals Board hears and discusses new reports presented by staff.)

1. Discussion of hearing schedules and ALJ availability pilot program.

Action: The Board discussed developing a pilot program to schedule hearings more efficiently and create less dead time on the calendar. The Board would like to move forward with a control group to test the process.

Old Business:

(The appeals Board hears and/or discusses matters on a follow-up basis.)

1. Update of regulatory amendments to the Board's rules of practice and procedure to govern, address and permit Board hearings via telephone or videoconference, including consideration of proposed amendments to Board regulation 376.

Action: Public Meeting is scheduled for June 16, 2022 to accept public comment on the changes to regulation 376.

2. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: The Board discussed proposed changes presented by DOSH in creating a system to interface with OSHAB's OASIS system. Chair Lowry will contact Dan Lucido with questions the Board has to the changes requested.

Legislation:

(Review and discuss current legislation which may affect the appeals Board.)

Action: Elizabeth Clarke updated the Board on current Legislation.

Chairperson's Report:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

Action: Chair Lowry discussed meeting with the Federal OSHA representative.

Board Members Reports:

(Hear reports from Board members on activities and issues affecting the Appeals Board.)

Action: No report.

Executive Officer's Report:

(Report regarding administrative matters.)

Action: Patricia Hapgood updated the Board on the Leave Balance reduction policy.
DIR developed a new department logo. Divisions are directed to use the logo when appropriate.
Aaron Jackson will be recognized at the DIR 2022 Superior Accomplishment Awards Ceremony May 18, 2022 and staff are encouraged to attend.

Staff Reports:

(Reports from the presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

1. Discuss whether there are any proposals for new regulations or proposals for modifications to existing regulations. In addition, discuss whether any concerns exist with existing regulations.

Action: No report.

2. Discuss status of Video Hearings.

Action: Judge Reedy updated the Board on the new process of parties calling into the zoom platform for Status Conferences and Pre-Hearings. The process seems to be well received by all parties.

3. Discuss recent appeals filed related to the current COVID-19 pandemic.

Action: The Board discussed the current procedures of processing COVID related cases and the proposal of changing the process to treat COVID related cases the same as other cases. Cases with unabated serious citations will continue to be expedited and all COVID related cases will continue to be tracked. The Board agreed to move forward with processing COVID related cases as described in the memo.

4. Litigation update:

Action: Chief Counsel, Jeff Mojcher updated the Board on current court cases.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Public Comment:

(Public comment will be entertained during discussion of each agenda item of the open meeting.)

Action: There were no public comments at this meeting.

The board recessed to its closed session.

Decisions of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The Decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the Decision. The board members review the Decision and decide if they will reconsider the ALJ Decision on their own motion.)

1300984 General Dynamics NASSCO
Action: The Board discussed this decision.

Petitions for Reconsideration:

(The Division of Occupational Safety & Health and the Employer each have the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

There are no Petitions for Reconsideration scheduled for review.

Orders Dismissing Appeal:

1486537 All Right Electric, Inc.
Action: The Board reviewed this Order.

1540636 Bestway Sandwiches, Inc.
Action: The Board reviewed this Order.

Orders Denying Leave To File Late Appeal:

1489483 California QSR Management, Inc.
Action: The Board reviewed this Order.

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

1332867 Guy F. Atkinson Construction, LLC
Whether the Division proved the alleged violation.

1410726 Hathaway Dinwiddie Construction Co.
Whether the Division proved the alleged violation.

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- 1224802 Ranch of the Golden Hawk
Whether the household domestic service exception applies to the tree trimming involved in this matter.
Action: The Board discussed this matter.
- 1291481 Sierra Pacific Forest Products
Whether Employer was in compliance with the cited safety order.
- 1155042 Signal Energy LLC
Whether Employer appropriately oversaw the actions of the subcontractors.
- 1192534 Shimmick Construction Company Inc.
Whether the employer committed the violation alleged.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1461476 Walmart, Inc.
Whether Walmart was an employer citable for the alleged violation.
Action: The Board discussed this matter.
- 1416143 Webcor Builders, Inc.
Whether the ALJ properly granted Employer's appeal due to the Division's failure to timely comply with a prehearing conference order.

Matters Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a Decision after Reconsideration or a Denial of a Petition for Reconsideration, either one or both parties may apply to the California Superior Court for a Writ of Mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. Key Energy Service, LLC (12004280)
2. Barnard Impregilo Healy, JV, CPF 17-515575, (317134021)
3. Ashley Furniture Industries, 34-2017-800002750 (1016514)
4. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
5. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)

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6. Process Cooling International, 34-2019-80003220 (1232555)
7. Prestige Painting, 37-2019-00066143 (1367265)
8. Davis Development Company, 34-2020-80003373 (1226084)
9. MWL Solutions, 34-2020-80003549 (1436014)
10. Hampton Tedder Electric, 34-2020-80003562 (1233597)
11. BMW West, LLC, 34-2021-80003574 (1399613)
12. Southern California Edison, 34-2021-80003580 (1320327)
13. L&S Framing, Inc., SCV-0046603 (1173183)
14. Granite Construction, 34-2021-80003634 (1235643)
15. Pacific Utility Installation, Inc., 30-2021-01201020 (1321161)
16. Grimmway Enterprises, Inc., BCV-21-101503 (1477159)
17. Grimmway Enterprises, Inc., BCV-21-101554 (1238985)
18. RND Contractors, Inc., CIV SB 2119442 (1436785)
19. Sunview Vineyards of California, Inc. RG21111733 (1153101)
20. Hill Crane Service Inc., 34-2021-80003744 (1135350)
21. Amazon.com Services, LLC dba Amazon Warehouse LGB3, 22STCP00403 (1473644)
22. Sierra Forest Products, VCU290996 (1291481)
23. USA Waste of California, Inc., 34-2022-80003841 (1384029)

Appellate Court:

1. Interline Brands, Inc., CIVDS2021813 (1251604)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.

Action: No report.

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2. Categorizing the Board's DARs and Denials on the DIR website.

Action: No report.

3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Action: No report.

4. Discussion of DOSH Proposal to have their eAttorney system interface with OASIS.

Action: No report.

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the Order and decide if they will reconsider or remand the issued order.)

1545492	Aegis Treatment Centers, LLC
1489853	Agrima Farms Inc.
1417196	Baker Electric, Inc.
1499864	Barnard Bessac Joint Venture
1461731	Barnhart Reese Construction
1500801	Brawley Elementary School District
1459818	Cal Ag Resources, Inc.
1559202	California Department of Transportation
1494822	Ciasom, LLC
1266866	Coastal Vineyard Care Associates
1497313	County Of Santa Clara, Santa Clara Valley
1575128	Diversity Business Solutions, Inc.
1495238	Enterprise Order Solutions, LLC
1468819	EUB Transport LLC
1540820	FCS Ag, Inc.
1561975	George L. Throop Company
1495766	Golden State Construction & Framing Inc.
1559586	Hudson Pacific Properties
1514699	Jacob Healthcare Center
1524795	Kwan Wo Ironworks, Inc.
1450914	Lyneer Staffing Solutions, LLC
1485544	M V Transportation, Inc.
1497246	Mark's Mobile Truck Service, LLC

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1344829	Millie & Severson, Inc.
1450561	Nate's Fine Foods, LLC
1488834	Norman Elloway DDS
1521658	Orchard's Tree Service, Inc.
1449996	PAE Applied Technologies, LLC
1533683	Panda Restaurant, Inc.
1523775	Pediatric & Family Medical Center
1490983	Pie Venture, LLC
1524294	Precision Development Group, Inc.
1336414	Prestige Painting Corp
1311884	Santa Barbara Center for The Performing Arts, Inc.
1511811	SFPUC - Wastewater Treatment Plant
1474541	Solar Sense PV Inc.
1565007	Sunfood Corporation
1230473	Sutter Home Winery, Inc.
1573440	The Lamb Company
1541952	The Neil Jones Food Company
1490037	The Permanente Medical Group, Inc.
1544441	Tristar FLC, Inc.
1555229	Tube-Tainer, Inc.
1420958	Walmart, Inc.
1346116	Westrock CP, LLC
1514475	YD Window, Inc.

Action: The Board reviewed and discussed the Settlement Orders issued by the Administrative Law Judges.

Personnel:

(Issues regarding staff)

Action: No report.

The Closed Session adjourned at 11:09 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its actions in the Closed Session, as indicated above. The meeting adjourned at 11:10 a.m.